a rail on the car, was struck and killed by the hook attached to the rail of the track because of its straightening out and flying up when the rail on the car was caught, the accident happening so quickly that the time could not be estimated even in seconds, this did not show the railroad guilty of negligence, conceding that the engine was out of order, that the fireman who handled it was incompetent to discharge the duties of an engineer, and that there was an insufficient number of employees engaged in unloading the rails.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 955.]

Same—Evidence—Burden of Proof.—In an action for causing the death of an employee of a railroad, the burden is on the plaintiff to show negligence of the railroad.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 895.]

LANE BROS. CO. *v.* SEAKFORD.

Nov. 22, 1906.

[55 S. E. 556.]

Pleading—Declaration—Requisites in General.—A declaration must state the facts relied on as constituting the cause of action with sufficient certainty to be understood by defendant, the jury and the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 39, Pleading, § 105.]

Master and Servant—Injury to Servant—Declaration—Sufficiency.—A declaration, in an action for personal injury, which alleges the relation of master and servant between plaintiff and defendant, and that plaintiff was operating a hoisting engine in defendant's work, which states the duty of defendant to exercise ordinary care to furnish and maintain for plaintiff a reasonably safe place for doing the work, and which avers that unskilled servants of defendant placed dynamite near where plaintiff was working and that the dynamite caught fire, exploded and injured plaintiff in a manner described, sufficiently states a cause of action.

Same—Duty of Master—Reasonable Care—Instructions.—An instruction in an action against an employer for injuries received by an employee that it was the duty of the employer to "use ordinary and all reasonable care" to furnish and maintain a reasonably safe place for the employee in which to work, etc., and if the employer failed to exercise "ordinary and all reasonable care" in the performance of any one or all of the duties specified, and such failure was the proximate cause of the injury, the jury must find a verdict for the employee, limits the duty of the employer to the exercise of ordinary and reasonable care, and is not misleading as leading the jury to sup-

pose that an unqualified duty rested on the employer to discharge the several duties mentioned.

ROLLER *v.* PAUL et al.

Nov. 22, 1906.

[55 S. E. 558.]

Receivers—Purchase of Claims by Receiver—Credit against Funds.—Where a receiver of funds arising out of the sale of real estate of a debtor against whom a general creditor's suit has been brought buys up the claims against the debtor, he cannot require payment for the face value of the claims, but can only recover such sum as he paid for them.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 42, Receivers, § 190; vol. 22, Executors and Administrators, §§ 467, 761.]

Same.—A receiver of funds arising out of the sale of real estate of a debtor was required to place the funds at interest, taking good security therefor, so as to have the same forthcoming when required by any decree subsequently rendered. The receiver did not invest the funds but the same remained in his hands to the time of an application for the settlement of his accounts. The receiver, subsequent to his appointment, purchased claims against the debtor for a sum less than their face value. Held that, as the beneficiaries of the funds were entitled to interest on the funds, and to profits arising from the purchase of the claims, they were not required to elect whether they would take interest or profits.

Same—Attorneys' Fees—Allowance.—A receiver of funds arising out of the sale of real estate of a debtor was required to invest the same. The claims asserted against the debtor were satisfied and a balance was left in the hands of the receiver. There was litigation over the funds in the hands of the receiver, who represented claims opposed in interest to the debtor entitled to the balance. Held, that the receiver was not entitled to an allowance for attorneys' fees out of the balance, since no services inured to the benefit of the debtor entitled thereto.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 42, Receivers, § 184.]

Same—Interest—Simple Interest.—Code 1887, § 3409 [Va. Code 1904, p. 1811] makes a receiver liable for moneys coming into his hands, and for interest thereon on his failing to invest the same. A receiver of funds arising out of the sale of real estate of a debtor was required, by the court appointing him, to invest the funds. The receiver did not invest them, but the same remained in his hands to the time of the application for the settlement of his accounts. Held, that the receiver was chargeable only with simple interest on the funds, notwithstanding section 3413 [Va. Code 1904, p. 1812] de-